D.B. CIVIL SPECIAL APPEAL(W)NO.466/2006

State of Rajasthan
Vs.
Vinod Bihari Mathur

DATE OF ORDER :: 12-02-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Bharat Vyas, AAG for the State.
Shri Manish Bhandari, for the respondent.

This special appeal is directed against the order of the learned Single Judge dated 9.3.2006 in SBCWP no.5030/2004 vacating the interim order of stay and rejecting the stay application of the State. The State has come in appeal.

The dispute relates to promotion on the post of Assistant Engineer. As per the rule, 50% of the posts are to be filled by direct recruitment, 30% from amongst Junior Engineers (Diploma) and 20% from amongst Junior Engineers(Degree). The respondent was initially appointed as a Junior Engineer in the Diploma holder category but on his attaining the qualification of AMIE which is equivalent to Bachelor of Engineering degree, he was allowed change of category to Junior Engineer(Degree) in terms of rule 6(d) of the Rajasthan Subordinate Engineering(Building and Road Branch) Service Rules, 1973.

As circumstance would have it, persons who were junior to the respondent in the Junior Engineer(Diploma) category came to be promoted on the post of Assistant Engineer. The appellant filed writ petition in this Court and later approached the Rajasthan Civil Services Appellate Tribunal. By the order impugned, the Tribunal directed the State to include the respondent in the Junior Engineer(Diploma) category and promote him on the basis of seniority from the date on which persons junior to him as Junior Engineer had been promoted.

The writ petition is still pending and we do not want to say more as far as factual aspects of the case are concerned.

In course of hearing, Shri Manish Bhandari appearing for the respondent took a fair stand that though the name of the respondent has been included in the seniority list of Junior Engineer(Diploma) vide order dated 22.11.2006 in the light of the decision of the Tribunal, he would not press for implementation of other part of the direction of the Tribunal for promotion as Assistant Engineer during pendency of the writ petition. Counsel submitted that the writ petition however may be heard on an early date.

Shri Bharat Vyas, AAG for the State submitted that this appeal may be disposed of in the light of the

above stand of the respondent.

We accordingly clarify that notwithstanding the respondent's inclusion in the seniority list of Junior Engineer(Diploma) as aforesaid, which is subject to final result of the writ petition, the case of the respondent for promotion on the post of Assistant Engineer may not be considered till disposal of the writ petition.

The writ petition may be listed for final disposal, along with S.B. Civil Writ Petition no.5301/2006, in the month of March, 2007 before the appropriate Bench as per roster. It is expected that after the writ petition is so listed for hearing, the same shall be decided at the earliest.

This appeal is disposed of accordingly.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen